HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.20857 OF 2006

Between:

Malakondaiah ..... **Appellant**

AND

Municipal Commissioner, Kandukuru
Municipality, Kandukuru,
Prakasam District & others. .....**Respondents**

:: O R D E R ::

Counsel for the petitioner : Sri Mettu Goverdhan Reddy

9th October, 2006

Per G.S.SINGHVI, C.J.

In this petition, petitioner – Malakondaiah has prayed for issue of a mandamus to respondent Nos.1 and 2 to demolish the alleged illegal construction made by respondent No.3 – Sidipothu Pichappa Naidu on municipal road situated in Survey No.605, Municipal Door No.10-3-73 in Kandukur Village and Mandal, Prakasam District.

The aforementioned prayer of the petitioner is founded on the assertions that respondent No.3 is the owner of 275.4/9 square yards

of house site comprised in Survey No.605; that the above site has an entrance door in the common passage of neighbouring house sites including the one belonging to the petitioner; that the petitioner acquired the house site measuring 252.4/9 square yards vide registered sale deed dated 26-3-1997; that respondent No.3 has encroached on the common passage and raised construction and that despite representations, respondent Nos.1 and 2 have not taken action to remove the illegal construction made by the said respondent.

Learned counsel for the petitioner invited our attention to representation dated Nil allegedly sent by his client to Commissioner, Kandukur Muicipality and photographs annexed to the writ petition and argued that failure of the authorities of the Municipality to perform their statutory duty to remove the encroachment from public street should be treated as sufficient for issue of a mandamus to respondent Nos.1 and 2 to take action in accordance with Section 192 of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act').

We have considered the submission of the learned counsel, but have not felt persuaded to accept the petitioner's prayer because he has not placed before the Court any tangible evidence to show that respondent No.3 has illegally encroached on public street and made construction over it. A careful reading of the averments contained in paragraphs 3 and 4 of the affidavit of the petitioner along with the photographs does not give a clear picture of the house sites of the parties and the status of the public street which is said to have been encroached by respondent No.3. The photographs annexed to the writ petition merely show that some construction activity is going on in the area, but this by itself is not sufficient to record a finding that the disputed construction is on the public street and the same is being made by respondent No.3. Representation dated nil sent by the petitioner is also silent about the site at which the alleged illegal construction is being raised by respondent No.3. Therefore, it is not possible to record a finding that respondent No.3 has raised some

construction in violation of the sanctioned plan or that he has encroached on public street, which deserves to be removed by the Municipal authorities by exercising power under Section 192 of the Act.

With the above observations, the writ petition is dismissed. However, liberty is given to the petitioner to avail remedy by filing civil suit.

As a sequel to dismissal of the writ petition, WPMP.No.26402 of 2006 filed by the petitioner for stay of the ongoing construction is also dismissed.

G.S.SINGHVI, C.J.

9th October, 2006.

C.V. NAGARJUNA REDDY, J.

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